

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-7468

ORIGINAL

To be argued by
SAMUEL N. GREENSPOON

United States Court of Appeals
FOR THE SECOND CIRCUIT

H. C. WAINWRIGHT & Co.,

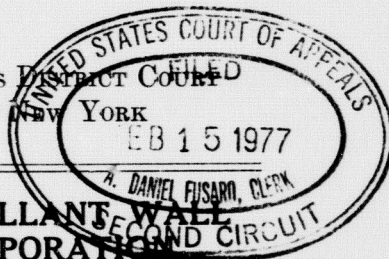
Plaintiff-Appellee,

against

WALL STREET TRANSCRIPT CORPORATION and
RICHARD A. HOLMAN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



**BRIEF OF DEFENDANT-APPELLANT WALL
STREET TRANSCRIPT CORPORATION**

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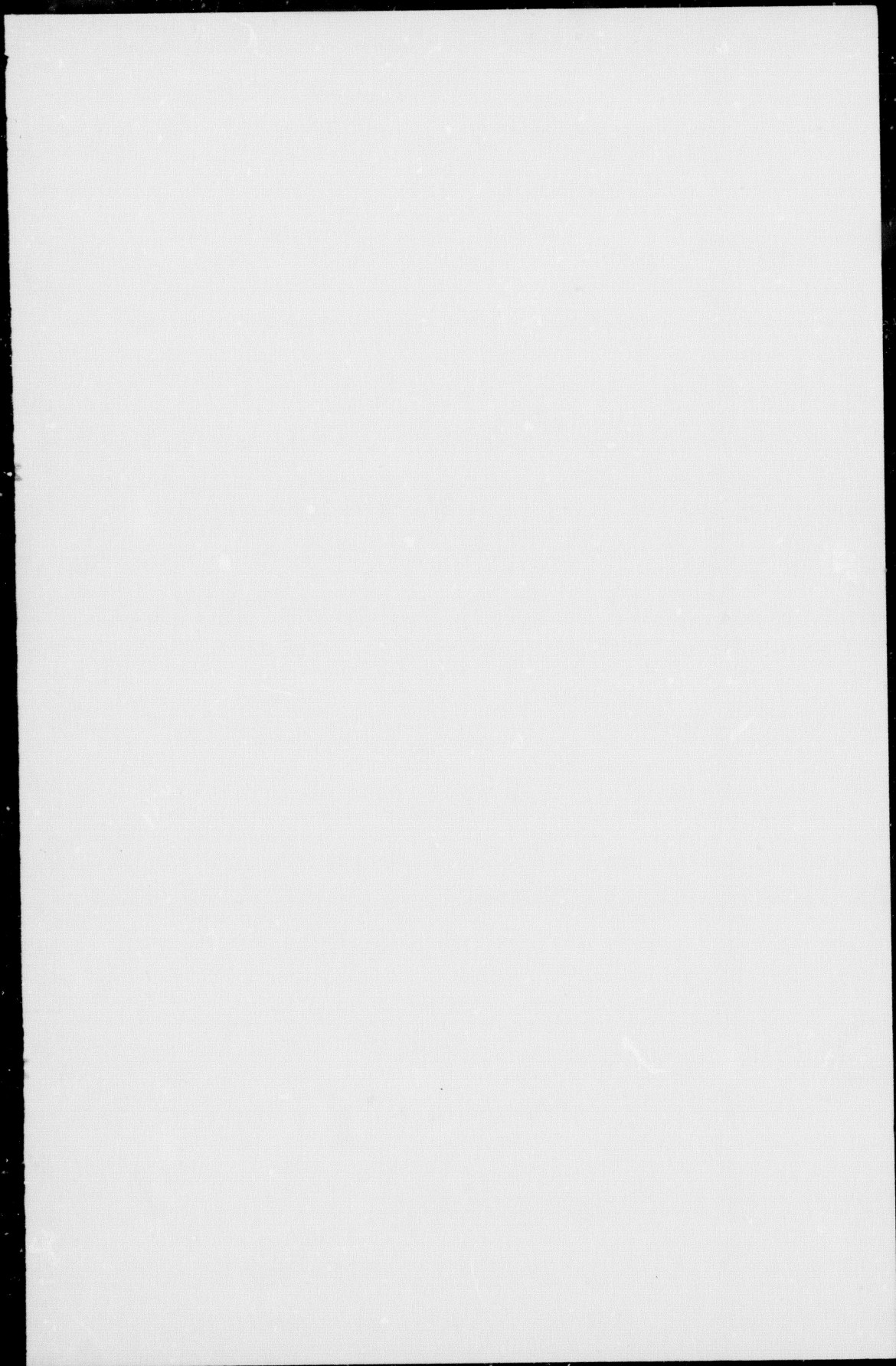


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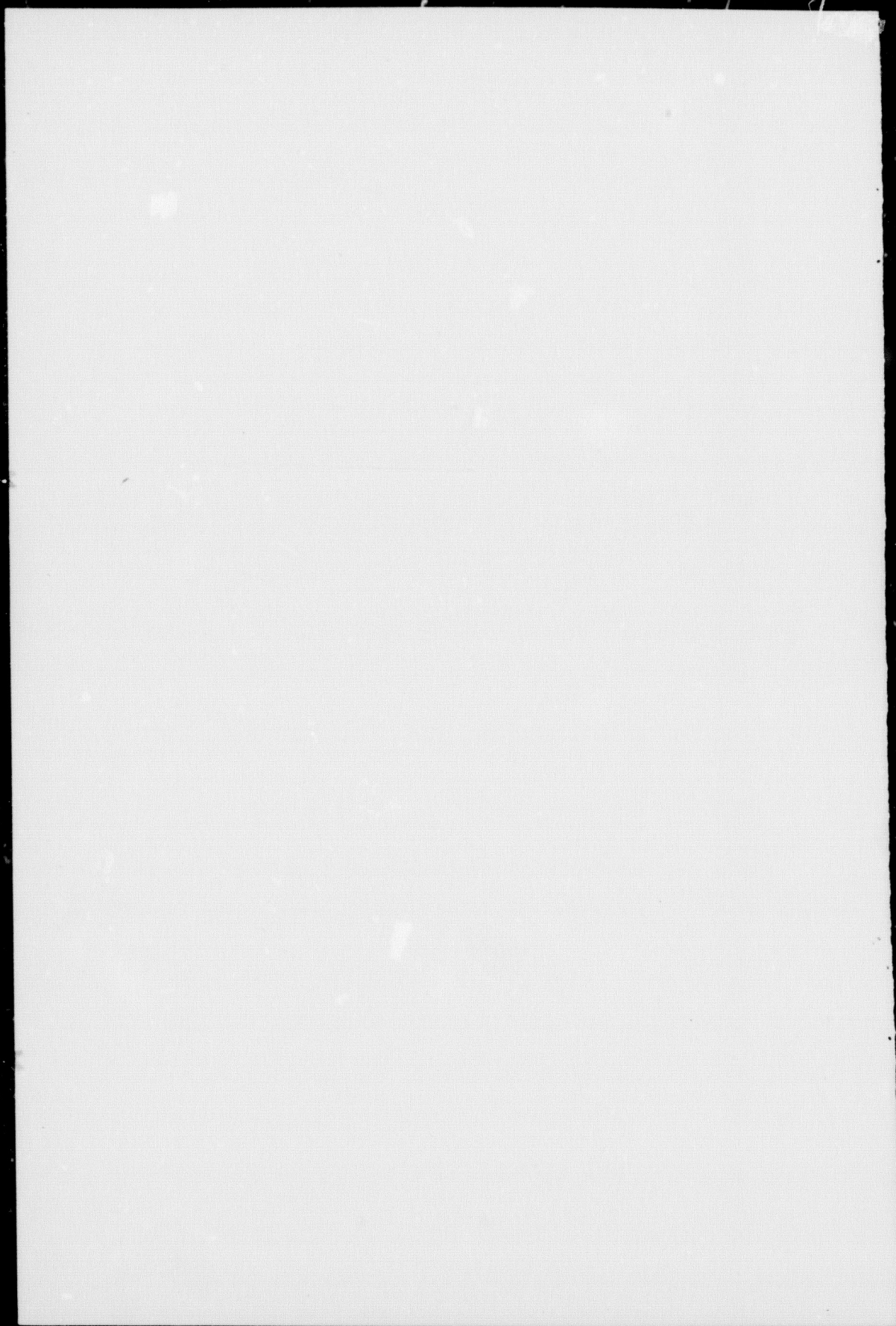
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Defendants-Appellants.

**BRIEF OF DEFENDANT-APPELLANT WALL
STREET TRANSCRIPT CORPORATION**

Preliminary*

The defendants appeal from a superseding order of the United States District Court for the Southern District of New York (Lasker, D.J.) dated October 12, 1976, which order, among other things, temporarily enjoined the defendants, pending determination of the action, from

- a) publishing, selling, marketing or disposing of "abstracts" of plaintiff's copyrighted research reports which had been previously published in the May 10, 17, 24 and 31, and July 5, 1976 issues of The Wall Street Transcript (a weekly newspaper);
- b) publishing, selling, marketing or otherwise disposing of any other "abstracts" of any of plaintiff's copyrighted research reports (whether or not such

* Figures in parentheses refer to pages in joint appendix unless otherwise noted.

research reports were then in existence or were written later).

The research reports in the record are fairly voluminous, detailed reports about publicly held companies, which are distributed by plaintiff to approximately 900 of its institutional clients (131a). According to plaintiff (131a):

"Basic Reports are always based upon interviews with one or more company officials."

Questions Presented

1. Does the injunction impose an impermissible prior restraint upon the press in violation of the First Amendment especially with respect to as yet unwritten and thus as yet uncopyrighted research reports?
2. Does the injunction constitute an impermissible prior restraint in violation of the First Amendment on the ideas expressed in research reports?
3. Where the plaintiff is utilizing insider or confidential information upon which it bases its research reports, does the public interest in full disclosure bar the plaintiff from utilizing the copyright laws to limit the audience for this insider information and conclusions derived therefrom to its institutional clients?
4. Do the so-called abstracts constitute fair use in that among other things the so-called abstracts are at most a summary of an article in a news report?
5. Where, as here, there is no evidence of any harm, irreparable or otherwise, to the plaintiff from the publication in said newspaper by the defendants of the so-called "abstracts" may a temporary injunction issue, especially since the plaintiff and the defendants are not in competition?

Statement of the Case

The parties and the dispute

The plaintiff is a Massachusetts limited partnership engaged primarily in the institutional research and brokerage business and is registered as a broker-dealer with the Securities and Exchange Commission (5a-6a). Plaintiff's institutional brokerage business has more than 900 clients, including most of the major banks, insurance companies, mutual funds, investment counsellors, pension funds and similar institutions (6a).

Plaintiff provides these clients with so-called research reports on publicly traded corporations which, according to plaintiff, are designed to provide a comprehensive and objective analysis of company and industry characteristics, with particular emphasis on current and future business, operating, competitive, financial and managerial trends (6a).

According to the plaintiff, it prepares and distributes so-called "Basic Reports" and "Special Reports" (6a). Plaintiff describes these reports as follows (6a):

"A Basic Report provides an in-depth study of a company with particular emphasis on current operations and the near-term and longer-range outlook, together with a review of the company's historical operating record. It contains sections concerning management, accounting policies, company and industry business characteristics, flow-of funds and balance sheet analysis, and dividend policy. *Basic Reports are based upon interviews with one or more company officials.* A Special Report generally concerns a major development at a company." (Emphasis supplied)

The plaintiff also says that all of such "sources of information" (132a), including of course the company offi-

cials provide "important inputs" to the reports (132a); and that the "Basic Reports" are circulated to company management for comment (133a).

According to the plaintiff, these research reports are prepared by analysts who are employed by or who are connected with the plaintiff, and each of whom is a specialist in one or more particular industries (7a). Wainwright says that from his research the analyst develops conclusions concerning industry trends as well as business, operating, competitive, financial and managerial trends for specific companies engaged in the industry which are then set forth together with the factual and analytical basis for them in research reports (7a).

The defendants are the owners and publishers of a newspaper called The Wall Street Transcript ("Transcript") (180a). The Transcript is a weekly newspaper and has been published every week for some 13 years; it has been afforded second-class mailing privileges by the post office and receives newspaper treatment therefrom; it is exempt from New York sales tax as a newspaper; and it has also been issued a working press card by the New York City police (180a). The Transcript's subscribers include colleges, universities, libraries (both public and private), lawyers, accountants, brokers, corporations and others; it is available to the public by subscription or at some newsstands (180a).

There is thus no competition between the plaintiff and the defendants and they are in entirely different fields of business; the plaintiff is a broker specializing in institutional trading in securities; the defendants are in the business of publishing a newspaper of general public interest, primarily concerned with economic, business and financial news (180a-181a).

The Transcript had for some time advertised that it published that which the public had a right to know. Thus, in the October 27, 1975 issue of Barron's the Transcript's ad-

vertisement stated among other things (164a):

"You Have a Right to Know"

"WHAT leading investment houses across the country are saying to their big institutional clients—the big banks, insurance companies, funds and important foreign clients.

"WHAT top management is saying at private meetings of Security Analysts Societies throughout the country."

* * *

"If you have any interest in the stock market, or business, or the economy, you not only have a right but an urgent need to get this timely news."

On the theory that the public had the right to know the defendants published news accounts of what various investment houses were telling through research reports their big institutional clients (180a, 181a, 182a, 183a). Defendants sought to distill from the research reports the ideas, opinions and conclusions set forth in the reports (183a).

Under date of May 27, 1976, plaintiff's counsel wrote to defendants (165a-6) objecting to the publication in the Transcript of what counsel called abstracts—but what are really news accounts—of three of plaintiff's copyrighted reports in the May 10, 17 and 24, 1976 issues of the Transcript.

Defendants' counsel replied to said May 27, 1976 letter under date of June 1, 1976 saying, among other things (167a):

"I have grave difficulty in finding any remote resemblance between the digest and the Wainright reports. The Basic Report e.g. embraces 26 pages, while the Transcript digest covers about 4 inches of type. Neither Wainwright's words nor artistic construction appear in the Transcript. I really believe that the Transcript's digests are fair use of Wainright's reports.

* * *

"However, we prefer to dispose of all matters amicably. Certainly Wainright and the Transcript are not in competition and Wainright has not been damaged.

"Certainly the Transcript makes every reasonable effort to avoid plagiarism. We should be pleased to discuss with you any suggestions you may have to avoid disputes."

Under date of June 17, 1976, defendants' counsel wrote to plaintiff's counsel setting forth what he thought might be a satisfactory account of one of the reports as to which plaintiff's counsel had previously objected in his May 27, 1976 letter (168a). Defendants' counsel suggested a news account as follows (168a cf. plaintiff's research report at 32a-57a):

"Under date of April 27, 1976 H. C. Wainwright & Co. issued a report signed by Thomas A. Tantrum concerning Overnite Transportation Co. (OTC—\$22). According to the report Overnite did not do well last year, but has shown improvement since the fall of 1975. Although Tantrum indicates that Overnite should show some continued improvement nonetheless he opines that various problems preclude any firm prognosis."

Apparently, plaintiff's counsel was not satisfied with the suggested account and replied under date of June 24, 1976 (169a):

"This is to confirm that, as I indicated when we spoke by telephone yesterday, it is our position that any summary published in The Wall Street Transcript of a research report prepared and copyrighted by H. C. Wainwright & Co. constitutes an infringement of Wainwright's copyright therein."

In that letter plaintiff's counsel objected also to an oral version of a proposed account of one of plaintiff's research

reports saying (169a):

"From your description, it would appear that the summary reveals the results of H. C. Wainwright & Co.'s analysis of C.I.T. Financial Corporation and traces the division by division analysis contained in the report. Such a summary would clearly constitute an infringement of Wainwright's copyright."

Defendants' counsel, under date of June 25, 1976, replied pointing out that there was a misunderstanding and that what he had in mind was (171a):

"What I told you is that the digest will state the conclusions or ideas expressed, but in language that neither compasses the artistic expression or words of the author. Thus the CIT article mentions various factors regarding CIT some of which are favorable and some unfavorable.

"All of that would be digested by simply stating that Wainwright has issued a report about CIT in which it concludes that CIT's prospects are both negative and positive, and the positive may outweigh the negative."

Again, defendant's counsel sought to head off litigation (172a):

"We have made every effort to reconcile Wainwright's interests, if any, with the public's right to know but apparently to no avail. Wainwright is not even in the business of selling its reports and cannot claim any loss of profits from impairing any sale of its reports since it makes no sales. I suggest that Wainwright alter its stance and recognize that copyright is no protection to its alleged ideas and opinions and that its better course of action is to cooperate with the Transcript in the same manner as the Transcript is prepared to cooperate with Wainwright."

Plaintiff's counsel responded under date of June 30, 1976 (173a) pointing out quite correctly "that the crux of what-

ever disagreement exists between us relates to the applicability and scope of the defense of fair use." In defense of his position plaintiff's counsel cited a number of cases (174a-5). However, a reading of those (or any other) cases indicates that the doctrine of fair use is an elusive doctrine at best, and at times almost impossible to comprehend (177a-8).

Under date of July 1, 1976, defendants' counsel wrote to plaintiff's counsel in part as follows (179a).

"I assure you that the Transcript is not looking for litigation and is prepared to do whatever it can do to reasonably accommodate both of the parties. As I indicated to you all that we intend to do is to make references to ideas or opinions expressed in a Wainwright report and I gather from your letter that you do not consider this an infringement.

"I have been carefully reading some of the Wainwright reports and a question has been raised in my mind concerning them. I know it has been a fairly common practice for corporate officers to discuss their corporations with analysts and in connection therewith to disclose to the analysts matter not of public record. It strikes me that some of the material in the Wainwright reports is of that nature. If that is so then the right to know doctrine really comes into play as well as other doctrines.

"I stand ready to cooperate with you in an effort to work out a reasonable format."

In the meantime between May 31, 1976 and July 1, 1976, the defendants had not published any accounts of plaintiff's research reports. Under date of July 5, 1976, the Transcript published an account of plaintiff's research report concerning CIT Financial Corporation (187a). That account was prepared by defendants' counsel after consulting opinions of the Court and in trying to meet objections posed by the plaintiff (187a).

The account as published covered 36 lines and contained some 275 words (187a). On the other hand the research report comprised 41 pages (187a; 33a-123a).

It is perfectly clear from plaintiff's attempt to show copying with respect to this research report that there is no copying at all (cf. plaintiff's analysis of the account with plaintiff's analysis of the basic report (158a-160a)). The only comparison between the two is that the Transcript utilized the names of the divisions of CIT which after all are hardly copyrightable and also used the phrase "short-term interest rates" which is also a standard, common term and not copyrightable (187a).

Indeed, although the Court below enjoined the distribution of the news account relating to CIT Financial Corporation, nonetheless the Court apparently enjoined it without consideration of the question of whether or not there was any copyright infringement or any copying. Thus, the following occurred on the motion for reargument (249a-250a):

"Mr. Regozin: That's the abstract of Wainwright on CIT Financial Corporation.

"The Court: Of course, all we are talking about anyway here—I mean, I took this simply to be a description of material that was attached here and not to characterize it as better or worse or anything else, that your abstracts as a group, you were enjoined from publishing.

"Mr. Greenspoon: Sure, but if one abstract as they call them, does not infringe upon their basic report, then it should not be enjoined.

"On page 16—

"The Court: I don't know what you mean by page 16.

"Mr. Greenspoon: Of Mr. Regozin's affidavit, he sets forth what he says are the exact things which we for example, on the left, he has abstract—

"The Court: I see.

"Mr. Greenspoon: There is absolutely no comparison between—

"The Court: What you are saying is you don't think that this particular item, that is, Item L—

"Mr. Greenspoon: Falls within your opinion.

"The Court: You may be right. I haven't studied that one for that purpose.

"I wonder if it is so important that we have to spend time on it now.

"Mr. Greenspoon: It is important.

"The Court: Why?

"Mr. Greenspoon: Because if I knew what your Honor's views were on this one, then I have guidelines."

We place emphasis on this point because the defendants made it clear in the Court below that they were prepared to comply with any guidelines laid down by the Courts as to what could or could not be published. In this connection at the request of the Court below the defendants prepared what they thought would be proper guidelines to be applied in the published accounts of copyrighted material (200a-202a). The defendants pointed out in connection with these guidelines that they had not attempted to define the outer limits of fair use of fair comment because they found the limits so elusive (200a).

The next day plaintiff's counsel wrote to the Court below, presumably in response to the letter dated July 26, 1976 which enclosed the guidelines. Plaintiff's counsel said nothing at all about the guidelines nor did the plaintiff's counsel state which, if any, of the guidelines he agreed with or disagreed with. Presumably, plaintiff's counsel rejected all of the guidelines (203a-205a). In any event the Court below did not mention the guidelines in its opinion, nor did the Court below set forth guidelines of fair use (211a-224a).

**Plaintiff is utilizing the copyright laws
for improper purposes**

The plaintiff claims that it distributes its research reports to a very limited group, to wit, its institutional clients, amounting to approximately 900 in number (6a). Plaintiff also concedes that its basic reports are based upon interviews with one or more company officials (6a).

The evidence in this case demonstrates that the plaintiff is obtaining non-public information from corporate officers and insiders; that this information is then circulated by plaintiff only to its institutional clients in the guise of research reports; and that it is such limitation of an audience which the plaintiff seeks through the utilization of the copyright laws to maintain (182a).

It is thus clear that plaintiff is seeking to give an insider benefit and advantage to a chosen few; and that the public disclosure requirements of the securities acts are frustrated by the injunction granted below (189a).

On the other hand, the distribution of the news accounts serve the public interest in the free dissemination of information; the Transcript is a newspaper; and its duty is to present to the public what others are doing, saying and thinking (189a).

It is true that after the defendants pointed out the admission by the plaintiff and charged that the plaintiff was utilizing insider information and distributing the same to a chosen few, the plaintiff denied such use in its reply papers (196a). But as this Court has previously pointed out, the analyst would hardly be talking to corporate officials and basing his research reports thereon if the analyst was merely seeking public information.

**No irreparable damage has
been shown**

The Transcript does not publish the news accounts of plaintiff's reports for pecuniary gain as such; to the contrary it publishes such news accounts as part of its activity in bringing news to the public (190a).

In that connection, the Transcript does no more than what the large daily newspapers do, which quote from and paraphrase copyrighted reports such as those of the plaintiff on a regular basis; these daily newspapers, like the Transcript, are seeking to fulfill their function of disseminating that which the public has a right to know (190a).

There is no evidence that the Transcript's accounts of plaintiff's research reports reduce, materially or otherwise, the demand for the original copyrighted research report and indeed no such claim was even made (187a). In fact, the Transcript has received requests for the original reports, which it has not complied with, but instead has referred the party to the plaintiff (187a).

Plaintiff's claim with respect to possible injury is set forth in Mr. Meyer's affidavit, sworn to July 9, 1976 (136a-137a). The totality of this alleged evidence is as follows (136a-137a):

"16. Abstracts of the foregoing Research Reports were published by THE WALL STREET TRANSCRIPT ('THE TRANSCRIPT') without Wainwright's consent. The damage to Wainwright's goodwill caused by the publication of these abstracts is incalculable. The Research Reports are, in my opinion, the reason Wainwright is able to obtain and keep its institutional clients, which use the Research Reports as fundamental input in their investment decision making process. Indeed, for the past two years, Wainwright has had the largest number of securities analysts rated as outstanding by INSTITUTIONAL INVESTOR magazine, the

leading trade publication in the institutional investment field.

"17. Wainwright does not give away its Research Reports. For THE TRANSCRIPT to publish abstracts of such reports impairs their value to Wainwright and to Wainwright's clients not least because by this means Wainwright's competitors in the brokerage business and potential institutional clients, as well as the general public, are provided with the fruits of Wainwright's research.

"18. It may be impossible for us to determine how much brokerage business Wainwright lost because of the publication by THE TRANSCRIPT of abstracts of Wainwright's Research Reports. We have no idea whether any of our institutional clients gave business to other brokerage houses because they were upset about the publication of the abstracts in THE TRANSCRIPT, nor do we have any idea how many potential customers used the abstracts as the basis for investment decisions, but did not request Wainwright to act as their broker in connection with such investment decisions."

There is no evidence of any reduction in demand whatsoever for plaintiff's research reports; none of plaintiff's 900 clients is shown to have complained, nor is there any showing that plaintiff has lost or will lose any commission from its securities business because of the publication of the news accounts in the Transcript (188a).

It would be absolutely impossible for the plaintiff to have lost any commission business because the Transcript publishes the news accounts. There is a substantial time gap between the issuance by plaintiff of its report and the publication of the news account thereof in the Transcript (188a). It is thus clear that there is no evidence at all of any injury to the plaintiff much less irreparable injury;

and indeed, there is some evidence that the Transcript's news accounts have given publicity to the plaintiff that would be more likely to induce clients to want to deal with the plaintiff (183a).

The opinion below

The Court pointed out that the Transcript argued that matter which lacks originality and facts as such are not copyrightable and that plaintiff's conceptions, viewpoints or ideas embodied in its research reports are not within the scope of copyright protection (214a).

The Court agreed that the Transcript stated the proposition of law correctly but that it did not apply to the facts of this case. In that the Court erred for the simple reason that the Transcript's news accounts published plaintiff's concepts, viewpoints or ideas and that is precisely what the plaintiff was complaining about (cf. 216a).

The Court below dismissed the Transcript's arguments that the plaintiff's research reports are news as an "ingenious designation", but faulty (216a).^{*} The Court, however, did say that the fact of plaintiff's issuing the report and perhaps whether it was favorable or unfavorable might be news but that the contents of the report are not news (216a). However, the Transcript had no intention and no desire to use the plaintiff's particular form of expression and at least with respect to the CIT financial news account, none was used (cf. plaintiff's analysis at 158a-160a).

The Court below concluded that the public has a right to know the facts but does not have a right to know them in the particular form in which an author assembles and expresses them (216a). But the Transcript did not utilize the particular form in which the plaintiff assembled and

^{*} Experts in the field do not agree with the Court below (237a).

expressed the facts and hence the Court below faced a direct confrontation between the First Amendment and the copyright laws.

The Court, however, said that there was no tension between the First Amendment and the copyright laws because, so the Court ruled, the doctrine of fair use has been precisely contoured by the Courts to assure simultaneously the public's access to knowledge of general import and the right of an author to protection of his intellectual creation (217a).

We respectfully submit that the Court there erred, and that the Court below gave less weight to the First Amendment than it did to a mere statute enacted by Congress pursuant to the permissive authority granted to Congress under the Constitution.

The Court dismissed the Transcript's argument that the plaintiff was seeking to utilize the copyright laws to protect its ability to disseminate insider information to its special institutional clients. The Court said that nothing in the record supports the unfounded claim that insider information is used in preparation of or is included in the reports and that the allegation of such use springs full blown from, and only from, the Transcript's memorandum in opposition (217a).

The Court clearly erred. The allegations of such misuse of insider information sprang not only from defendant's answering affidavit but from plaintiff's admission that basic reports are based upon interviews with one or more company officials (6a, 182a, 189a). Since it is conceded that the research reports are based upon interviews with one or more company officials, it cannot be said that information derived from those company officials was not utilized in the research reports.* On the other hand, as this Court

*In plaintiff's words "while all of the sources of information described above [including such interviews] provide important inputs to the securities analyst . . ." (132a) (Bracketed material interpolated).

has already noted, analysts do not interview company officials to obtain public information. In view of this concession by the plaintiff a full-scale hearing on that issue alone should have been ordered so as to insure that the injunction and the copyright laws were not being used to frustrate the full disclosure requirements of the law.

The Court below further said that under the holding in *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), there was serious doubt that the defendants have standing to assert the defense of violation of the securities laws (218a). Of course, *Blue Chip* stands for the proposition that in order for one to assert an affirmative claim under the securities laws he must be a buyer or a seller or an offeror or an offeree of securities. But that is not what the defendants are contending. The defendants are contending that the Court could not put its imprimatur by injunction upon a violation of the securities laws; and that the Court could not permit the copyright laws to be utilized for an illegal purpose.

The Court below further rejected the defense of fair use, pointing out that the Transcript's major position was anchored in the theory of fair use (218a). The Court below quoted from its prior opinion in *Marvin Worth Productions v. Superior Films Corp.*, 319 F. Supp. 1269 (S.D.N.Y. 1970), that the doctrine of fair use was of "quicksilver content" (219a). The Court then said that there are four tests to determine whether the doctrine of fair use applies:

1. Was there a substantive taking qualitatively or quantitatively?
2. If there was such a taking, did the taking materially reduce the demand for the original copyrighted property?
3. Does the distribution of the material serve the public interest in the free dissemination of information?

4. Does the preparation of the material require the use of prior materials dealing with the same subject matter?

We submit that there is not a word of evidence in this record to show that any taking reduced, materially or otherwise, the demand for the original copyrighted property. We submit further that the distribution of the news accounts served the public interest in the free dissemination of information. After all, if this information is helpful to large institutional clients, then it should be helpful to every single member of the public.

We are not clear on what the Court below means by the test of whether the preparation of the material required the use of prior materials dealing with the same subject matter. But, if the plaintiff was not utilizing insider information then it must have been utilizing public materials dealing with the same subject matter. The plaintiff is thus trapped on the horns of a dilemma—it either is utilizing private, confidential insider information or it is utilizing publicly disseminated materials. In either event, the grant of the injunction was improper.

I

The injunction imposes an impermissible prior restraint upon the press

The injunction restrains the defendants from publishing so-called "abstracts" of plaintiff's research reports, which are not as yet written and hence not as yet copyrighted (254a). On the reargument, defendants sought clarification of that part of the injunction. The Court below confirmed that such restraint was intended to cover research reports not yet written and hence not yet copyrighted (247a-248a):

"Mr. Greenspoon: Taking up the second one, that which I gather is the future. As I understand that

provision of the judgment, I just want to be very clear about that. If Wainwright writes one of these special reports a month from now, it isn't even copyrighted as of today.

"The Court: That's right.

"Mr. Greenspoon: Obviously, it isn't even filed. You can't bring a proceeding on an uncopyrighted piece of paper which has not been filed with the office.

"The Court: I don't know what you mean by that. Of course the terms of B(1) specifically are limited to copyrighted material.

"Mr. Greenspoon: Sure, but that copyrighted material isn't in existence now.

"The Court: I agree.

"Mr. Greenspoon: The law is very clear that until the copyrighted material is actually filed, you can't bring a proceeding on it. So what we are faced here with is an injunction on a matter where they would be barred from even suing on at this time.

"The Court: It seems to me you have rehearsed this argument a number of times, Mr. Greenspoon.

"Mr. Greenspoon: Yes, I know.

"The Court: I don't know why we differ so, but we do, and I don't propose to change that."

That injunction is clearly an impermissible prior restraint on the press in violation of the First Amendment; it restrains publication of accounts of research reports not yet written; of research reports never seen by any Court; and of accounts thereof never seen by any Court. No Court has ever issued such an injunction so far as our research shows. Indeed, we doubt if anyone has heretofore asserted that an injunction could issue under the copyright laws as to matter not yet written and hence not yet copyrighted.

The Constitution (Art. I, Sec. 8) grants no rights to authors; it merely authorizes Congress to enact copyright legislation and such power vested in Congress certainly

may not impinge upon First Amendment rights. Cf. *Wheaton v. Peters*, 33 U.S. 591, 661, 663 (1834); *Mazer v. Stein*, 347 U.S. 201, 214 (1954); *Krafft v. Cohen*, 117 F. 2d 579, 580 (2 Cir. 1941). So far as copyrights are concerned the Constitution is permissive, not mandatory. *Deepsouth Packing Co. v. Laitram Corp.*, 406 U.S. 518, 530 (1972); and that is to be contrasted with the Court's guarding of the First Amendment "with a jealous eye". *A.F.L. v. Swing*, 312 U.S. 321, 325 (1941).

The injunction with respect to future and unwritten research reports thus poses a square confrontation between the copyright laws and the First Amendment. And we submit that under these circumstances the copyright laws (assuming arguendo that they apply to unwritten material to be copyrighted in the future) must yield.

We are here dealing with matters of public interest. The mere fact that the news accounts involve economic matters or commercial matters is utterly irrelevant. The public has the same right to know and be informed about these economic or commercial matters as it does any other matters. *Bigelow v. Virginia*, 421 U.S. 809 (1975); *Virginia State Board of Pharmacy v. Virginia Consumers Council*, — U.S. —, 48 L. Ed. 2d 346 (1976). In the *Board of Pharmacy* case the Supreme Court pointed out (p. 360 of 48 L. Ed. 2d):

"Moreover, there is another consideration that suggests that no line between publicly 'interesting' or 'important' commercial advertising and the opposite kind could ever be drawn. Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of

public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. See *Dun & Bradstreet, Inc. v. Grove*, 404 U.S. 898, 904-906, 30 L. Ed. 2d 175, 82 S. Ct. 204 (1971) (Douglas, J. dissenting from denial of certiorari). See also *FTC v. Proctor & Gamble Co.*, 386 U.S. 568, 603-604, 18 L. Ed. 2d 303, 87 S. Ct. 1224 (1967) (Harlan, J. concurring). And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered. Therefore, even if the First Amendment were thought to be primarily an instrument to enlighten public decision making in a democracy, we could not say that the free flow of information does not serve that goal."

As Judge Lumbard, writing for himself and Judge Hays, pointed out in *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F. 2d 303, 311 (2 Cir. 1966) cert. den. 385 U.S. 1009 (1967):

"The spirit of the First Amendment applies to the copyright laws at least to the extent that the courts should not tolerate any attempted interference with the public's right to be informed regarding matters of general interest when anyone seeks to use the copyright statute which was designed to protect interests of quite a different nature."

And as was stated in *Red Line Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390 (1969):

"It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail. . . . It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and expressions which is crucial

here. That right may not constitutionally be abridged either by Congress or by the FCC".

Wherever there has been a clash between a statutory right and the free dissemination of ideas, the statutory right has been compelled to yield. *Buckley v. Valeo*, — U.S. — 46 L. Ed. 2d 659 (1976); *Lamont v. Postmaster General*, 381 U.S. 301 (1965); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

Here, of course, no one has seen the research reports which are not as yet written nor has anyone seen the news accounts which the defendants might publish concerning such unwritten research reports. Thus, the restraint of this injunction comes before this Court with a heavy presumption against its constitutional validity, and the Court does not concern itself with the truth or validity of the news account. *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931).

In *Organization for a Better Austin*, the United States Supreme Court said (p. 418):

"Any prior restraint on expression comes to this Court with a 'heavy presumption' against its constitutional validity" [citations omitted].

* * *

"It is elementary of course, that in a case of this kind the courts do not concern themselves with the truth or validity of the publication. Under *Near v. Minnesota*, 283 U.S. 697, 75 L. Ed. 1357, 51 S. Ct. 623 (1931), the injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights."

This is not a case where the defendants are appropriating the fruits of another's labor in order to publish a com-

peting work. This is a case where the Transcript seeks to vindicate the public's right to know; and where the plaintiff seeks not to restrain the expression utilized by the plaintiff, especially expression not yet in existence, but the ideas and conclusions expressed therein. The copyright laws, if they can be construed to authorize such an injunction, are thus clearly violative of the First Amendment, and the injunction must accordingly fall.

As Judge Gurfein ruled in *United States v. New York Times Co.*, 328 F. Supp. 324, 330 (S.D.N.Y. 1971) affd. 403 U.S. 713 (1971):

"This has been an effort on the part of the Times to vindicate the right of the public to know. It is not a case involving an intent to communicate vital secrets for the benefit of a foreign government to the detriment of the United States."

It is clearly speculative at least at this time as to what might happen in the future with respect to presently unwritten reports and accounts thereof which were not before the Court. The grant of such a restraint here is made all the more intolerable because of defendant's commitment to comply with any guidelines laid down by any Court with respect to publishing accounts of research reports written and copyrighted by the plaintiff in the future. The surmise and speculation or conjecture as to future consequences with respect to such unwritten reports is no basis for the granting of an injunction. As Mr. Justice Brennan pointed out in *New York Times Co. v. United States*, 403 U.S. 713, 725 (1971):

"The error that has pervaded these cases from the outset was the granting of any injunctive relief whatsoever, interim or otherwise. The entire thrust of the Government's claim throughout these cases has been that publication of the material sought to be enjoined

'could', or 'might', or 'may' prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result."

And Mr. Justice Brennan further pointed out that under the copyright laws the ideas expressed were not protected. Thus he said (ftn. p. 726 of 403 U.S.):

"*Freedman v. Maryland*, 380 U.S. 51, 13 L. Ed 2d 649, 85 S Ct 734 (1965), and similar cases regarding temporary restraints of allegedly obscene materials are not in point. For those cases rest upon the proposition that 'obscenity is not protected by the freedoms of speech and press.' *Roth v. United States*, 354 U.S. 476, 481, L Ed 2d 1498, 1505, 77 S Ct 1304 (1957). Here there is no question but that the material sought to be suppressed is within the protection of the First Amendment; the only question is whether, notwithstanding that fact, its publication may be enjoined for a time because of the presence of an overwhelming national interest. Similarly, copyright cases have no pertinence here: the Government is not asserting an interest in the particular form of words chosen in the documents, but is seeking to suppress the ideas expressed therein. And the copyright laws, of course, protect only the form of expression and not the ideas expressed."

With respect even as to research reports in existence and accounts thereof which were before the Court, the copyright laws must still yield. The public interest mandates that information which is claimed to be essential to a limited group of 900 institutional clients of the plaintiff is also essential to the entire public. And the Courts may not lend themselves to protection of the private interests of the plaintiff in limiting the audience for that essential in-

formation. In such circumstances the public interest must prevail and anyone, including the defendants, have the right to assert that public interest. *Harrisonville v. Dickey Clay Co.*, 289 U.S. 334, 338 (1933); *Virginia Ry. v. Federation*, 300 U.S. 515, 552 (1937).

As the Supreme Court pointed out in the *Harrisonville* case, *supra* (ftn. 2 at p. 338 of 289 U.S.):

"In some other classes of controversies the public interest has been deemed so strong that a general principle of noninterference by injunction has been adopted with respect to them. Cf. Act of March 2, 1867 14 Stat. 475, R. S. § 3224; *Giles v. Harris*, 189 U.S. 475, 486; *Near v. Minnesota*, 283 U.S. 697, 719."

The Court below, in an effort to avoid this constitutional confrontation severely limited what it considered news, although there is some inconsistency in the Court's opinion on this subject. Thus, the Court said (216a) that the fact of plaintiff's issuing a report and perhaps whether it was favorable or unfavorable, bullish or bearish, may be news, but that is all which may be news, said the Court below. On the other hand, the Court said (214a) that plaintiff's conceptions, viewpoints or ideas embodied in its research report are not within the scope of copyright protection, presumably because they are news.

In any event, the Supreme Court of the United States takes a much broader viewpoint of what constitutes news. Thus, in *Time, Inc. v. Pape*, 401 U.S. 279, 285-6 (1971) the Supreme Court said:

"But a vast amount of what is published in the daily and periodical press purports to be dissemination of what somebody *said* rather than of what anybody *did*. Indeed, perhaps the largest share of news concerning the doings of government appears in the form of accounts of reports, speeches, press conferences and the like." (Emphasis the Court's).

And it is irrelevant that the Transcript is primarily devoted to economic, financial and commercial matters. The fact is that the content of the Transcript covers an extremely wide range of human activity, perhaps every range of that activity; and it has been described as the organ of economic history in the making. The Transcript, and every other part of the press, is protected by the First Amendment regardless of the type of news it may publish.

As the Supreme Court said in *Lovell v. Griffin*, 303 U.S. 444, 452 (1938):

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion."

We respectfully submit that the injunction, insofar as it relates to unwritten research reports, not before the Court, and clearly not yet copyrighted, is improper as violative of the First Amendment. We respectfully submit further that the injunction with respect to existing copyrighted research reports, which were before the Court, is likewise impermissible and that the copyright laws must yield to the First Amendment with respect to both aspects of the injunction.

Furthermore, under 17 U.S.C. Sec. 13 no action may be maintained for alleged copyright infringement prior to the deposit of copies and registration of the research report. Palpably, with respect to research reports written in the future, no action could now be commenced with respect thereto but yet the Court has enjoined the defendants with respect to such unwritten and, hence, presently uncopyrighted, research reports. (17 U.S.C. Sec. 13 has been reenacted without substantive change as 17 U.S.C. Sec. 411, Copyrights Act of 1976, Sec. 411.)

II

**The injunction violates the principle
of fair use**

The doctrine of fair use, originally Court evolved, has been more or less codified as part of the Copyrights Act of 1976, Section 107; 17 U.S.C. Sec. 107. It is unclear whether the doctrine of fair use has constitutional underpinnings, i.e. the Courts and Congress carved out the fair use exception because of the First Amendment.

The doctrine of fair use, as distilled by the Courts and as codified by Congress is still elusive. Thus, 17 U.S.C. 107 provides in part as follows:

"Notwithstanding the provisions of section 106, the fair use of a copyrighted work, . . . for purposes such as criticism, comment, news reporting . . . is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

"(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

"(2) the nature of the copyrighted work;

"(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

"(4) the effect of the use upon the potential market for or value of the copyrighted work."

To be noted is the fact that Congress did not purport to set forth all of the factors to be considered but merely required that the four factors listed above be considered. Presumably, then Congress intended that the Courts could still consider any other factors which the Courts have utilized in determining the sweep of fair use.

Indeed the Report of the Committee on the Judiciary (Report No. 94-473) says that Section 107 purports to codify the law of fair use as it had previously existed (p. 62):

"Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way."

The Senate Report also stated in some detail the general background of the problem of fair use and pointed out specific examples of fair use as set forth in the Register of Copyrights 1961 Report as follows (pp. 61-2):

"The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive give some idea of the sort of activities the courts might regard as fair use under the circumstances: 'quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; *summary of an address or article, with brief quotations, in a news report*; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.'" (Emphasis supplied).

In *Marvin Worth Productions v. Superior Films Corp.*, 319 F. Supp. 1269 (S.D.N.Y. 1970), the Court distilled four tests from the cases with respect to fair use as follows (p. 1274 of 319 F. Supp.):

“The cases and commentaries attempting to define the quicksilver concept of ‘fair use’, although varying and overlapping in their definitions, appear to agree that at least four tests are appropriate to determine whether the doctrine applies: (1) Was there a substantial taking, qualitatively or quantitatively? (2) If there was such a taking, did the taking materially reduce the demand for the original copyrighted property? (3) (As stated in *Rosemont, supra*), does the distribution of the material serve the public interest in the free dissemination of information? And (4) does the preparation of the material require the use of prior materials dealing with the same subject matter?”

We submit that whether the tests laid down in *Worth, supra*, or in Section 107 are applied, the news accounts constituted a fair use of the so-called research reports. If we assume, contrary to fact, that a substantial portion of the copyrighted work was used in the news account, nonetheless the balance of the tests cannot be met.

There is not one word of evidence that the news accounts in any way had any affect upon the potential market for or value of the copyrighted work; by the same token there is not a word of evidence in this record that the news account reduced the demand in any way for the original copyrighted property.

Parenthetically, the plaintiff argues, that the news accounts might impair their brokerage commissions but that is not the test at all, the test is whether or not the demand for the copyrighted material has been lessened or whether the copyrighted material has been reduced in value. In any event, there is no proof or evidence that the plaintiff lost any commission business because of the news accounts.

But above all, the news accounts did serve the public interest in the free dissemination of information. If the research reports have value to those who receive them, and are necessary to them, then palpably the news accounts are essential to the entire public. This is not a case of a book or a play which has no value as such, but whose value depends on persons purchasing the book or buying tickets to see the play; this is a case in which the plaintiff claims that the research reports have value as research reports. Hence, these are newsworthy events and the distribution of the material serves the public interest in the free dissemination of information.

That is the very point made in the Senate Report quoted above. The Senate Report enumerated various examples of fair use set forth in the Register's 1961 report which included the following:

"summary of an address or article, with brief quotations, in a news report."

As matter of fact, the Transcript's news accounts of plaintiff's research reports do not go as far as the example quoted above. That example is far broader than any contention asserted by plaintiff with respect to the Transcript's news accounts. To the extent that the Transcript used the words or phrases contained in a research report, such use was de minimis, when compared with the volume of the research report.

The purpose of the use here by the Transcript was merely to report what the plaintiff was saying, which is the essence of news. The news account was not published for the purpose of appropriating plaintiff's material for a competitive work or for the purpose of reducing the value of whatever rights the plaintiff had in the copyrighted material. To the contrary, the use was solely for the purpose of vindicating the public's right to know.

To enjoin the news accounts of plaintiff's research reports would deprive the public of information concerning what the plaintiff says are important matters. Palpably, under such circumstances the public interest in obtaining information is dominant over any alleged copyright protection. *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F. 2d 303, 309 (2 Cir. 1966) cert. den. 385 U.S. 1009 (1967).

Rosemont also teaches that there must be a showing that the value of the copyrighted articles has been lessened by the Transcript's news account (p. 311 of 366 F. 2d). Here there is no claim at all that the value of the copyrighted articles has in any wise been lessened. What is claimed is that there is a mere possibility that the news accounts might affect plaintiff's commission business. But that is a far cry from showing that the value of the copyrighted articles has been per se lessened.

Judged in the overall context of the plaintiff's copyrighted articles, the extensive matter contained therein which is not copyrightable under any circumstances and the public interest in the news accounts, together with the very small parts of the research reports reflected in the news accounts, and of course the First Amendment right of the public to know, there simply is no basis here for a preliminary injunction. The doctrine of fair use bars the same. Cf. *Gardner v. Nizer*, 391 F. Supp. 940 (S.D.N.Y. 1975).

III

The plaintiff is seeking to suppress information for an improper purpose

The plaintiff is not seeking to protect its copyrighted material as copyrighted material. To the contrary, it is seeking to protect the commission business which it says it receives on the trading of securities for its customers. But

that purpose goes far beyond the sweep and scope of the copyright laws. To exacerbate the situation, the plaintiff is seeking to utilize the copyright laws to limit the audience of insider information to its own institutional clients. We submit that the injunction puts the Court's imprimatur upon what may well be illegal activity of the plaintiff in violation of the securities laws.

The plaintiff concedes that its research reports are based upon interviews with company officials. In plaintiff's own words (6a):

"Basic Reports are based upon interviews with one or more company officials."

But what is the plaintiff obtaining from these company officials other than non-public information? As this Court noted in *SEC v. Geon Industries, Inc.*, 531 F. 2d 39 (2 Cir. 1976 (at p. 47):

"This testimony goes a long way toward supporting the finding that Neuwirth was disclosing non-public information; *certainly Rauch was interested in something other than the color of Neuwirth's hair or in getting information available to everyone.*"

In *Geon*, there was no direct evidence of any disclosure by company officials to the broker; the company official claimed inability to recall the specific matter of the conversation while the broker asserted his privilege against self-incrimination. There was some testimony that the broker talked to the company official; that only one broker called the company official and that the company official did not tell the broker to stop the calls for a substantial period of time. Nonetheless, this Court held that the company official had disclosed non-public information. By the same token the plaintiff admits that its basic reports are based upon interviews with one or more company officials. Certainly, these interviews do not merely touch upon public information; after all that is available without interviewing

company officials. If the research reports were based upon public information, then it is doubtful if they are really copyrightable at all.

It will not do to say that the defendants were neither buyers nor sellers nor offerors nor offerees of securities. Of course they were not. But by the same token, the plaintiff cannot ask this Court or any Court to give judicial approval to the private dissemination of non-public information through injunctive relief under the copyright laws. That we assert is asking too much. We think that *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F. 2d 303 (2 Cir. 1966) and *Time Inc. v. Bernard Gies Associates*, 293 F. Supp. 130 (S.D.N.Y. 1968) bar the Court from giving approval by way of injunction under the copyright laws to what may well be violations of the basic economic laws of this nation.

The economic laws of this nation are based on the notion of full disclosure; full disclosure to everyone; not full disclosure to a chosen few. There is a strong public policy against limiting disclosure of this non-public information. The private interest of the plaintiff in limiting the audience to its institutional clients simply cannot prevail against the public's right to know. The public interest must prevail, and anyone including these defendants, has a right to assert that public interest. *Harrisonville v. Dickey Clay Co.*, 289 U.S. 334, 338 (1933); *Virginia Ry. v. Federation*, 300 U.S. 515, 552 (1937).

We respectfully submit that at a minimum the Court below should have held an evidentiary hearing to probe into the question of whether or not the plaintiff was utilizing the copyright laws to obtain Court approval for violation of the securities laws. Palpably, if as plaintiff's concession appears to mandate, a finding can be made that the plaintiff is utilizing insider information which it is supplying to a limited few, then no injunction should issue and no copyright relief is warranted.

IV

**The Court below abused its discretion in
granting the injunction**

We have pointed out the strong constitutional prohibition against any prior restraint of the press. Any injunction which contains such prior restraint as the injunction does here, comes before the Court with a heavy presumption against its constitutionality. And the Courts are not concerned with the validity of the matter sought to be enjoined.

Here there is not only a prior restraint against publication of news accounts of matters already written and thus copyrighted, but there is a prior restraint against matters which have yet to be written. No one can say that any news account written in the future of a research report not yet written, will be written in such a manner as to violate the copyright laws. That is all the more reason why the injunction should not have been granted.

Moreover, the defendants agreed to be bound by any guidelines laid down by the Courts with respect to the news accounts it published of future research reports written by the plaintiff. Certainly, the notion of a free press is thus anathema to the type of injunction granted herein.

We have further pointed out that the doctrine of fair use bars the injunction here. There is not a scintilla of evidence to show that the news account in any way, much less materially, reduced the demand for the original copyrighted property. Obviously, there could be no evidence that that would be true with respect to research reports not yet written. Moreover, there is evidence that the news accounts published in the Transcript may have increased the demand for the original copyrighted material (187a-188a).

Put another way there is not a scintilla of evidence of any adverse effect of the Transcript's news accounts upon the potential market for or value of the copyrighted work. In addition the news accounts do not constitute any substantial part of the copyrighted work as a whole. See, 17 U.S.C. Sec. 107(3).

Moreover, we have here what appears to be an attempt to use the copyright laws to assist in the violation of the securities laws. The Court is being asked to weigh the balance between an alleged copyright infringer and an alleged securities laws violator. That is like saying that a Court should decide the equities between highwaymen; and that the Courts have always refused to do.

Thus, in view of the points made above, the Court below clearly abused its discretion in granting the injunction; but there is more.

Concededly, the plaintiff and the defendant are not in competition; and the defendant is in a business which in no wise impinges upon the plaintiff's business. There is no evidence whatsoever of any damage to the plaintiff much less irreparable damage upon which a temporary injunction must rest. It is true that the Court concluded that there was every reason to believe that the publication of the news accounts "may materially reduce the demand for" plaintiff's services (223a). Of course that is not the test and it is unsupported by any evidence in any event. The test is whether or not the news accounts will materially reduce the demand for the copyrighted material (17 U.S.C. Sec. 107).

In any event, plaintiff's own evidence is that it was not damaged. Plaintiff said (137a):

"It may be impossible for us to determine how much brokerage business Wainwright lost because of the publication by *The Transcript* of abstracts of Wainwright's Research Reports. We have no idea whether

any of our institutional clients gave business to other brokerage houses because they were upset about the publication of the abstracts in *The Transcript*, nor do we have any idea how many potential customers used the abstracts as the basis for investment decisions, but did not request Wainwright to act as their broker in connection with such investment decisions."

But a finding of irreparable damage is absolutely essential for a temporary injunction and none can be or has been made here. *McGraw Hill, Inc. v. Worth Publishers, Inc.*, 335 F. Supp. 415, 422 (S.D.N.Y. 1971); *Time, Inc. v. Bernard Geis Associates*, 293 F. Supp. 130, 146 (S.D.N.Y. 1968); *New York Times Co. v. United States*, 403 U.S. 713, 725, 730 (1970).

In the *New York Times* case Mr. Justice Brennan pointed out (p. 725 of 403 U.S.):

"The error that has pervaded these cases from the outset was the granting of any injunctive relief whatsoever, interim or otherwise. The entire thrust of the Government's claim throughout these cases has been that publication of the material sought to be enjoined 'could' or 'might', or 'may' prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result."

And Mr. Justice Stewart and Mr. Justice White expressed similar views (p. 730 of 403 U.S.):

"But I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our Nation or its people. That being so, there can under the First Amendment be but one judicial resolution of the issues before us. I join the judgments of the Court."

Accordingly, we respectfully submit that for this additional reason the injunction granted below was improper.

Conclusion

Whether or not in this type of case where freedom of the press is involved the District Court has discretion, the order appealed from is wrong.

The injunction constitutes an impermissible prior restraint upon freedom of the press. The doctrine of fair use as expounded by the Courts and as codified by Congress mandated the denial of the injunction. The plaintiff is clearly utilizing the copyright laws for improper purposes and to assist it in violating the securities laws.

The public is entitled to know. If plaintiff's clients are entitled to know then so is the public. The plaintiff cannot pick and choose to whom this insider information should be furnished.

In any event the plaintiff has shown no damage at all much less irreparable damage.

The order appealed from should be reversed with costs.

Respectfully submitted,

EATON, VAN WINKLE, GREENSPOON & GRUTMAN
*Attorneys for Defendant Wall Street
Transcript Corporation*

Of Counsel:

SAMUEL N. GREENSPOON

U.S. Court of Appeals, for the Second circuit

Wainwright

vs

Wall Street Transcript

AFFIDAVIT
OF SERVICE

STATE OF NEW YORK,

COUNTY OF **ny**, ss:

Afrim has kaj being duly sworn,
deposes and says that he is over the age of **18** years and resides at **1481 42nd st Bklyn NY**

That on the **15th~~XXX~~** day of **Feb, 1977** **19** at
he served the annexed **brief of def-appellant Wall Street Transcript** upon
1. Richard Holman, 120 Wall, NY, NY 2. Cahill Gordon & Reindell, 80 Pine st, NY, NY
in this action, by delivering to and leaving with said **attorneys**

three true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the
person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this **15th**
day of **februa ry, 1977** 19

Afrim Hashey

Richard W. Holman
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 23, 1977